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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,892	07/14/2003	Edward R. diGirolamo	4782-031	6857

24112 7590 11/02/2004

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EXAMINER

CANFIELD, ROBERT

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/618,892

Applicant(s)

DIGIROLAMO ET AL. ST

Examiner

Robert J Canfield

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07/14/03</u> . | 6) <input type="checkbox"/> Other: _____ |

1. This is a first Office action on the merits for application serial number 10/618892 filed 07/14/03. Claims 1-28 are pending.
2. The examiner acknowledges receipt of the IDS filed 07/14/03. An initialed copy of the 1449 form is attached.
3. The disclosure is objected to because of the following informalities: page 5 of the specification states that Figures 2 and 4 show five openings. The examiner only see four openings.

Appropriate correction is required.

4. Claims 20 and 22 are objected to because of the following informalities: In claim 20 at line 8 "spot" should be "slot" and in claim 22 "slot" is missing after "elongated" at line 3. Appropriate correction is required.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-15 and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,598,518 to Hohmann.

Hohmann provides wallboard 16, studs 14, ties 12 having plate 24, triangular spikes 39 and 41 shown in figure 3 as having been bent back from plate 24 and which have inherently have been cut to form the prongs, fastener openings 32, fasteners 44, tie holder/ retainer 26, slot 28, tie 18 and bricks 22.

7. Claims 1-8, 11-13, 15, and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,875,319 to Hohmann.

Hohmann provides wallboard 32, studs 12, ties having plate 32, triangular spikes 50 and 52, fastener openings 40, fasteners 58, 60, tie holder/ retainer 34, slot 54, tie 16 and bricks 26.

8. Claims 20-23 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,955,172 to Pierson.

Figure 5 provides a tie having transverse ribs and notches at an inner end for fitting within an elongated slot in a raised surface of a plate as shown in figure 2.

9. Claims 20-23 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 1,854,633 to Stephens.

See figure 1.

10. Claims 20 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,816,008 to Hohmann.

Plate 50, fasteners 48, slot 56 and L-shaped tie 42.

11. Claims 20-27 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,206,577 to Moriez et al.

Figure 4 provides a plate 17 with an elongated slot 16 in a raised surface thereof, the plate fastened to a wall 18, and an L-shaped tie 14 with opposed notches.

12. Claims 20-28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,918,230 to Carrol.

Carrol provides plate 21 inherently fastened to a backup structure 30, the plate 21 having a raised surface having a slot 26 which holds a tie 40 therein having an L-shaped portion, opposed notches and an intermediate portion 44.

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1, 2, and 5-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,955,172 to Pierson in view of U.S. Patent 4,598,518 to Hohmann.

Pierson provides wallboard 13, studs 14, plates 11 with fastener openings 40, 41 for fasteners 42, a tie holder formed as an elongated slot in a raised surface, and a tie 70 with transverse ribs and a notched inner end (figure 5).

What Pierson fails to provide is that the metal plate has a series of spikes projecting from the backside thereof for projecting into the wallboard.

Hohmann teaches at the time of the invention it was known to provide a brick tie plate with a series of triangular spikes 39 and 41 projecting from the backside of the plate for preliminarily holding the tie in place prior to the insertion of the fasteners.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the plates 11 of Pierson could have been provided with rearward projecting spikes as taught by Hohmann at 39 and 41 so that the tie of Pierson could be preliminarily mounted prior to being permanently fastened.

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J Canfield whose telephone number is 703-308-2482. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert J Canfield
Primary Examiner
Art Unit 3635

A handwritten signature in black ink, appearing to read "Robert J. Canfield", written over the printed name.

10/28/04